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EXAMINER
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KARPINSKI, LUKE E

ART UNIT	PAPER NUMBER
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1616

NOTIFICATION DATE	DELIVERY MODE
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04/02/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/824,203	<b>Applicant(s)</b> YAQUB ET AL.	
	<b>Examiner</b> LUKE E. KARPINSKI	<b>Art Unit</b> 1616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 December 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Receipt of amendments, arguments, and remarks filed 12/09/2009 is acknowledged.

#### ***Claims***

Claims 9 and 38 are amended.

Claims 40 and 41 are new.

Claims 1-41 are pending and under consideration in this action.

#### ***Rejections***

Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 40 and 41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

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which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Neither the specification nor the claims as originally filed recite any language to give support to a claim of 80-120 psi.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Applicant Claims
2. Determining the scope and contents of the prior art.
3. Ascertaining the differences between the prior art and the claims at issue, and resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**1. Claims 1-4, 6-13, 17-19, 21-23, 25-28, and 30-41 are rejected under 35 U.S.C. 103(a)** as being unpatentable over US Patent No. 4,772,427 to Dawson et al.

### ***Applicant Claims***

Applicant claims a method for manufacture of a post-foaming composition, comprising: adding a gelling agent to a mixture comprising an anionic surfactant in an amount to achieve a 4:1 ratio with said gelling agent, combining said mixture with a post-foaming agent, and filling packages with said mixture prior to gel formation.

Applicant also claims said gel forming at least 4 minutes after the addition of said post-foaming agent, said gel structure being stable for 12 months, the gel structure only formed at least 4 minutes after addition of the post foaming agent, and said mixture packaged into final containers prior to gel formation.

Applicant further claims are specific gel agents, including laureth-4, a percentage range for said gel agent, amphoteric surfactants and a percentage range thereof, a saturated aliphatic hydrocarbon, a percentage range for said post-foaming agent, the gel rigidity remaining unchanged for at least 10 minutes after addition of the post-foaming agent, and the method of claim 9, wherein said steps are preformed through plant pipework and absent an applied pressure of at least 80psi.

***Determination of the Scope and Content of the Prior Art***  
***(MPEP §2141.01)***

Dawson et al. teach methods of making post-foaming gel compositions (col. 8, line 53 to col. 9, line 2), comprising anionic surfactants (abstract), an anionic surfactant to non-ionic gelling agent of 4:1 or greater (abstract), filling said mixtures into packaging prior to gel formation (col. 8, line 61 to col. 9, line 19), said gel forming up to 24 hours after the addition of the post foaming agent (col. 8, line 61 to col. 9, line 19), and filling said compositions into the final container prior to gelling (col. 8, line 61 to col. 9, line 19), as claimed in claim 9.

Dawson et al. further teach polyoxyethylene (4) lauryl alcohol, also known as Brij 30 and laureth-4, (col. 4, lines 49-65) as claimed in claims 1-3 and 11, 7% of a gelling agent present, which reads on 0.01-8% (col. 10, examples 9 and 10), as claimed in claims 4, 12, and 13, 0.01-30% surfactant present (col. 10, examples 3 and 4), as claimed in claims 6 and 17-19, a saturated aliphatic hydrocarbon with 4-5 carbon atoms (abstract and col. 5, lines 20-26), as pertaining to claims 7 and 21-23, and 25, 0.01-14% post-foaming agent present (col. 5, lines 20-26, col. 9, example 1, and col. 10, lines 55-57), as claimed in claims 8 and 26-28, and 30-31, sodium lauryl ether sulphate (SLS) (col. 4, lines 22-30), as claimed in claim 32, alkali metal alkyl ether sulfates (col. 10, examples 3 and 4), as claimed in claim 33, and iso-pentane (col. 5, lines 26), as claimed in claim 34.

***Ascertainment of the Difference between Scope the Prior Art and the Claims  
(MPEP §2141.012)***

Dawson et al. do not teach said formulations stable for 12 months at 25° C or below as claimed in claim 9. However, Dawson et al. do teach stable compositions (abstract and col. 3, lines 24-26).

Dawson et al. do not teach that said components are mixed in pipework absent at least 80psi for each embodiment as claimed in claims 36, 37, and 39-41. However, Dawson et al. do teach that said mixtures may be produced and remain in liquid state for up to 24 hours before gelling.

***Finding of Prima Facie Obviousness Rational and Motivation  
(MPEP §2142-2143)***

Regarding claim 9, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to produce the formulations of Dawson et al. with the property of remaining stable for at least 12 months under certain conditions.

One of ordinary skill in the art would have been motivated to do this because Dawson et al. teach said formulations as stable and one would have wanted such a consumer product to remain stable for at least 12 months to account for shipping time as well as time spent on the store shelves or being stored/utilized by a consumer. Therefore it would have been obvious to optimize the formulations of Dawson et al. to remain stable for at least 12 months, in order to provide a product with sufficient shelf life.

Further regarding claim 9, it would also be expected that compositions comprising of the same components in the same amounts would remain stable for the same amount of time when stored under the same conditions. The Office does not have the facilities capable of testing the length of time that the compositions disclosed by Dawson et al. will remain stable, therefore the burden has been shifted away from the office and it is now incumbent upon Applicant to show that the compositions disclosed in Dawson et al. would not remain stable.

Further regarding claims 9 and 10, Dawson et al. teach that the gel may be formed anytime from immediately after addition of said agent to 24 hours later. It is reasonable to state that one of ordinary skill would have known that manufacture and packaging of said formulations is easier when said formulation is in liquid form, not gel form, and knowing that the gel formation could be timed for up to 24 hours after addition of said gelling agent one could have timed such formation for after all processing was completed and said formulation was packaged, which could be 4 minutes or greater. The limitation of said formulation being **only** formed at least 4 minutes after the addition does not overcome Dawson et al. because Dawson et al. still teach that the gelling time is flexible, and in the timeline of immediately to 24 hours, a majority of said range is at least 4 minutes.

Further regarding claim 9, Dawson et al. teach both, said formulations piped into storage containers prior to gelling and said formulations mixed and formed in the final container. The art clearly teaches embodiments wherein said formulations are dispensed into containers prior to gelling, one embodiment in final aerosol containers



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and another into larger storage containers, which could be sold as final containers for industrial purposes.

Regarding claim 35, the viscosity and therefore the gel rigidity of said formulations would necessarily increase after said formulations were dispensed into containers and allowed to stand. Dawson et al. teach gelling after said formulations are dispensed into containers and a liquid composition would necessarily have a lower viscosity and gel rigidity than a gel composition of the same components.

Regarding claims 36, 37, and 39-41 it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to mix said gel composition components within said pipework without elevated pressure before dispensing said mixture to a final container in order to produce the invention of instant claims 36 and 37.

One of ordinary skill in the art would have been motivated to do this because Dawson et al. teach that said components may be mixed and remain in liquid state for up to 24 hours before gelling occurs. Therefore it would have been obvious to mix said components within pipework prior to dispensing said mixture to a final container in order to have only one pipe dispensing liquid to a container rather than several pipes.

Regarding the container limitations of claims 9 and 38, the container teachings of Dawson et al. read on said limitations (col. 9, lines 11-19).

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been prima facie obvious to

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one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

**2. Claims 5, 14-16, 20, 24, and 29 are rejected under 35 U.S.C. 103(a)** as being unpatentable over US Patent No. 4,772,427 to Dawson et al. in view of International publication No. WO 97/03646 to Hall et al.

***Applicant Claims***

Applicant claims the composition in the method of claim 9 further comprising an amphoteric surfactant.

***Determination of the Scope and Content of the Prior Art (MPEP §2141.01)***

The teachings of Dawson et al. are delineated above and incorporated herein. In particular, Dawson et al. teach post-foaming gel compositions comprising surfactants.

***Ascertainment of the Difference between Scope the Prior Art and the Claims (MPEP §2141.012)***

Dawson et al. do not teach an amphoteric surfactant as claimed in claim(s) 5, and 14-16. This deficiency in Dawson et al. is cured by Hall et al. Hall et al. teach the utilization of amphoteric surfactants in post-foaming gel compositions (page 7, line(s) 8-17).

***Finding of Prima Facie Obviousness Rational and Motivation***  
***(MPEP §2142-2143)***

Regarding claims 5 and 14-16, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to produce the formulations of Dawson et al. with an amphoteric surfactant as taught by Hall et al. in order to produce the invention of instant claims 5 and 14-16.

One of ordinary skill in the art would have been motivated to do this because Dawson et al. and Hall et al. are analogous art, teach to similar compositions, and Hall et al. teach that such compositions may comprise a mixture of surfactants, including amphoteric surfactants. Therefore it would have been obvious to utilize the amphoteric surfactants of Hall et al., within the post-foaming gel compositions of Dawson et al. in order to impart the properties and feel of an amphoteric surfactant onto said formulations.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

**3. Claims 1-4, 6-13, 17-19, 21-23, 25-28, and 30-41 are rejected under 35 U.S.C. 103(a)** as being unpatentable over US Patent 4,772,427 to Dawson et al. in view of US Patent 4,651,503 to Anderson III et al. and US Patent 4,405,489 to Sisbarro

***Applicant Claims***

Applicant claims are delineated above and incorporated herein.

***Determination of the Scope and Content of the Prior Art (MPEP §2141.01)***

The teachings of Dawson et al. are delineated above and incorporated herein.

***Ascertainment of the Difference between Scope the Prior Art and the Claims (MPEP §2141.012)***

Dawson et al. do not teach a method wherein said ungelled compositions are piped through pipework without a pressure of 80psi or greater as claimed in claims 1-39. This deficiency in Dawson et al. is cured by Anderson et al. and Sisbarro. Anderson et al. teach packaging delayed forming gels and that said packaging may have problems due to high viscosity of said gel (col.1, lines15-61), and that said gel composition is mixed, in liquid form, in pipework, added to a final container, and sealed prior to formation of said gel (col. 4, line 62 to col. 5, line 19, and claim 1). Further, Sisbarro teach that a pressure of 30-50psi is required to move low viscosity liquid gels through plant pipework (col. 6, lines 6-27).

***Finding of Prima Facie Obviousness Rational and Motivation***

**(MPEP §2142-2143)**

Regarding the limitation of said gel forming after packaging into a final container, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to package the compositions of Dawson et al. with the methods of Anderson et al. in order to produce the invention of instant claims 1-41.

One of ordinary skill in the art would have been motivated to do this because Dawson et al. and Anderson et al. both teach to post foaming gel compositions and methods of packaging and Anderson et al. teach that gelling in pipework can cause problems. Therefore it would have been obvious to utilize the packaging methods of Anderson et al, with the formulations of Dawson et al. in order to avoid gelling within said pipework.

Regarding the limitations to an elevated pressure, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to practice the methods of Anderson et al. with 30-50psi as taught by Sisbarro in order to produce the invention of instant claims 1-41.

One of ordinary skill in the art would have been motivated to do this because Anderson et al. teach a liquid formulation pumped through pipework and Sisbarro teaches similar formulations, in low viscosity gel form, requiring 30-50psi to move said compositions through said pipework. Therefore it would have been obvious to utilize 30-50psi as taught by Sisbarro, with the methods of Anderson et al. in order to utilize a pressure known to move low viscosity compositions through pipework. It is noted by the examiner that the partially gelled formulations of Sisbarro would have a higher viscosity

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than the liquid formulations of either Anderson et al. or Dawson et al. and therefore would require a higher pressure to move said compositions through pipework that the later references formulations would require.

Regarding the container limitations of claims 9 and 38, the container teachings of Dawson et al. read on said limitations (col. 9, lines 11-19).

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

**4. Claims 5, 14-16, 20, 24, and 29 are rejected under 35 U.S.C. 103(a)** as being unpatentable over US Patent 4,772,427 to Dawson et al. in view of International Patent Publication WO/1997/03646 to Hall et al., US Patent 4,651,503 to Anderson III et al., and US Patent 4,405,489 to Sisbarro

#### ***Applicant Claims***

Applicant claims are delineated above and incorporated herein.

#### ***Determination of the Scope and Content of the Prior Art (MPEP §2141.01)***

The teachings of Dawson et al. are delineated above and incorporated herein.

***Ascertainment of the Difference between Scope the Prior Art and the Claims  
(MPEP §2141.012)***

Dawson et al. do not teach a method wherein said ungelled compositions are piped through pipework without a pressure of 80psi or greater as claimed in claims 1-39. This deficiency in Dawson et al. is cured by Anderson et al. and Sisbarro. Anderson et al. teach packaging delayed forming gels and that said packaging may have problems due to high viscosity of said gel (col.1, lines15-61), and that said gel composition is mixed, in liquid form, in pipework, added to a final container, and sealed prior to formation of said gel (col. 4, line 62 to col. 5, line 19, and claim 1). Further, Sisbarro teach that a pressure of 30-50psi is required to move low viscosity liquid gels through plant pipework (col. 6, lines 6-27).

***Finding of Prima Facie Obviousness Rational and Motivation  
(MPEP §2142-2143)***

Regarding the limitation of said gel forming after packaging into a final container, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to package the compositions of Dawson et al. with the methods of Anderson et al. in order to produce the invention of instant claims 1-39.

One of ordinary skill in the art would have been motivated to do this because Dawson et al. and Anderson et al. both teach to post foaming gel compositions and methods of packaging and Anderson et al. teach that gelling in pipework can cause problems. Therefore it would have been obvious to utilize the packaging methods of

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Anderson et al, with the formulations of Dawson et al. in order to avoid gelling within said pipework.

Regarding the limitations to an elevated pressure, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to practice the methods of Anderson et al. with 30-50psi as taught by Sisbarro in order to produce the invention of instant claims 1-39.

One of ordinary skill in the art would have been motivated to do this because Anderson et al. teach a liquid formulation pumped through pipework and Sisbarro teaches similar formulations, in low viscosity gel form, requiring 30-50psi to move said compositions through said pipework. Therefore it would have been obvious to utilize 30-50psi as taught by Sisbarro, with the methods of Anderson et al. in order to utilize a pressure known to move low viscosity compositions through pipework. It is noted by the examiner that the partially gelled formulations of Sisbarro would have a higher viscosity than the liquid formulations of either Anderson et al. or Dawson et al. and therefore would require a higher pressure to move said compositions through pipework than the later references formulations would require.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.



***Double Patenting***

Claims 2-4 and 9 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 9 of copending Application No. 10/824,202.

This is a provisional obviousness-type double patenting rejection.

***Determination of the Scope and Content of the Prior Art (MPEP §2141.01)***

Dawson et al. '202 claims a method for manufacture of a composition comprising, adding a non-ionic gelling agent to an anionic surfactant at a ratio of 1:4 or less, combining said mixture with a post-foaming agent, and filling said mixture into a container prior to gel formation, wherein the gel rigidity remains unchanged for at least 4 minutes. '202 also claim a list of different gelling agents and a percentage thereof.

***Ascertainment of the Difference between Scope the Prior Art and the Claims (MPEP §2141.012)***

Dawson et al. '202 do not teach the said compositions remaining stable for at least 12 months at a specified temperature.

***Finding of Prima Facie Obviousness Rational and Motivation***

***(MPEP §2142-2143)***

It would also be expected that compositions comprising of the same components in the same amounts would remain stable for the same amount of time when stored

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under the same conditions. The Office does not have the facilities capable of testing the length of time that the compositions disclosed by Dawson et al. '202 will remain stable, therefore the burden has been shifted away from the office and it is now incumbent upon Applicant to show that the compositions disclosed in Dawson et al. would not remain stable.

### ***Response to Arguments***

Applicant's arguments filed 12/09/2009 have been fully considered but they are not persuasive.

Applicant argues that there is no motivation to solve the same problem as that of the present invention and that none of the prior art addresses said problem.

This argument is not found persuasive because the prior art is not required to discuss each and every problem or solution in order to render the instant claims obvious, further all embodiments taught by Dawson et al. are free of said problem. In one embodiment said compositions are maintained under pressure freely moving through pipework and a second embodiment teaches adding all components of said compositions separately to the final container, after which said container is shaken to form said gel absent any pressure.

Applicant also argues that Dawson et al. do not teach a delayed gelling of at least 4 minutes.

This argument is not found persuasive because Dawson et al. teach that said gelling may take place immediately or up to 24 hours later (col. 8, line 68 to col. 9, line 2).

Applicant also argues that Dawson et al. teach that the gel compositions are always kept under pressure.

This argument is not found persuasive; although Dawson et al. do teach, in one embodiment, that said compositions are kept under pressure at all times, a second embodiment teaches that all components of said gel mixture may be added to a container which can maintain pressure, this is not to say that said components are added under pressure, simply that said container can maintain pressure, which any standard container can do, such as a gas can or barrier pack container. Further, with all components being added separately there is no need to maintain the delivery system under elevated pressures, as there is no risk of said separate components gelling. Dawson et al. also teach that it is known to maintain said mixed gel components in a liquid state for up to 24 hours, which means that said components may be added to a container, not under pressure, and remain in said container without gelling for said period of time, therefore there is no requirement to add said components to a pre-pressurized container. Further the need for a container which can maintain pressure is due to the fact that as said liquid composition gels, said composition is susceptible to expansion, without utilization of a container which is capable of maintaining pressure said gel composition would expand and possibly foam and leak out of said container.

Applicant also disagrees with the reading of a storage container as the final product container.

This argument is not found persuasive because it would have been obvious to add said formulations to any type of container, including a storage container or a personal use container.

Applicant also argues that all components being added to a container and shaken to form said gel, as disclosed by Dawson et al., is nothing more than a 'throw away' statement.

This argument is not found persuasive because all teachings of Dawson et al. are used and it is improper for applicant to label any statement made in the prior art as a 'throw away' statement simply because it is used to render the instant claims obvious.

Applicant also argues that the scientists for the instant application confirm that adding all components to a container and shaking would not result in a gel formed, absent an applied pressure.

This argument is not found persuasive because said statements have not been submitted in declaration form. Further, it is not understood how the compositions of Dawson et al., comprising the same components and percentages as instantly claimed would not form a gel without pressure, however, applicant claims that the instant compositions will.

Applicant also argues that the teaching in Dawson et al. to gelling taking place up to 24 hours later is a 'throw away statement'.

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This argument is not found persuasive because all teachings of Dawson et al. are used and it is improper for applicant to label any statement made in the prior art as a 'throw away' statement simply because it is used to render the instant claims obvious.

Applicant also argues that Dawson et al. keep said formulations under pressure to keep them from gelling.

This argument is not found persuasive because Dawson et al. state that said gelling delay is due to the formulation, not to the pressure (col. 8, line 68 to col. 9, line 2). Further, applicant's rationale is flawed because Dawson et al., in one embodiment, teach maintaining pressure throughout the manufacture and packaging process, said formulations in liquid form in said pipeworks and when filled into said storage container, which is under pressure, yet said formulation turns into a gel while in said storage container, clearly Dawson et al. do not teach an elevated pressure for keeping said formulations from gelling because said gelling is dependant upon the formulation and not the applied pressure.

Regarding the amendment of applied elevated pressure, this amendment does not overcome the embodiment in Dawson et al. which does not require pressure (col. 9, lines 3-7). Further applicant claims an applied elevated pressure; however Dawson et al. teach a maintained pressure, these are seen as different pressures. For example Dawson teaches maintaining pressure at 80-120psi in one embodiment, this maintained pressure plus an applied elevated pressure of 10psi would result in a total system pressure of 90-130psi.

***Conclusion***

Claims 1-41 are rejected.

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUKE E. KARPINSKI whose telephone number is (571)270-3501. The examiner can normally be reached on Monday Friday 9-5 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LEK

*/Mina Haghighatian/*  
Primary Examiner, Art Unit 1616